

At the October 15, 2010 preliminary hearing, claimant requested temporary total disability compensation and medical treatment for his hips. Respondent argued that claimant's current need for medical treatment was not related to the July 14, 2008 accident and the medical evidence failed to establish within a reasonable degree of medical probability that the accident aggravated claimant's preexisting bilateral hip condition. Claimant argued the fact that he had been asymptomatic before the accident coupled with the court ordered doctor's reports established that his preexisting condition had been aggravated by the work-related accident.

After the preliminary hearing the Administrative Law Judge (ALJ) entered an Order For Compensation for respondent to pay temporary total disability compensation and provide medical treatment for claimant's hips. The ALJ made no factual findings, nor any analysis of the issues. However, it is implicit in the Order For Compensation that the ALJ found claimant met his burden of proof to establish that his accidental injury aggravated, intensified or accelerated the preexisting condition in his hips.

Respondent argues that claimant's bilateral hip complaints were neither caused nor aggravated by his accidental injury arising out of and in the course of employment with respondent. Claimant argues the ALJ's Order should be affirmed.

The sole issue for Board determination is whether claimant's present need for bilateral hip medical treatment is causally related to claimant's July 14, 2008 work-related accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

The facts of this claim are not seriously disputed. Briefly stated, on July 14, 2008, claimant was trying to crank a C-96 engine when it back fired and claimant fell backwards. On August 1, 2008, claimant had an MRI of his lumbar spine. MRI revealed mild to moderate degree of left paracentral protrusion at the level of L4-5 and L5-S1 more prominent at the level of L5-S1. At the level of L4-5 this is left paracentral; but at the level of L5-S1 appears to be more annular type but more to the left side. Claimant also had facet joint arthropathy at the level of L5-S1.

After treatment, which included epidural injections, did not resolve claimant's complaints, surgical hemilaminotomies, microdiskectomies and foraminotomies at L4-5 and L5-S1 were performed. But claimant continued to complain of pain, primarily in his back, left hip and lower extremity.

Claimant sought additional medical treatment and on September 9, 2009, the parties agreed to refer claimant to Dr. Paul Stein for an independent medical examination (IME) in order to obtain treatment recommendations. After Dr. Stein examined claimant he noted in pertinent part:

Diagnosis at this time is indeterminate. Treatment was given for a left lumbar radiculopathy which may have been the case but there is still a consideration of left hip joint disease either as the sole cause of his initial symptoms or as a contributing factor. Further investigation is recommended as follows: MRI scan of the left hip. Further recommendations may follow, depending upon the results.¹

¹ P.H. Trans. (Apr. 9, 2010), Ex. 1.

An MRI was performed and the MRI report stated in pertinent part:

1. Abnormal right and left hips with prominent deformity of the right femoral head and multiple cystic changes with cortical breakthrough. These findings would be compatible with AVN/osteochondrosis. No dislocation or fracture of the right hip is present.
2. There are similar type changes on the left, somewhat less prominent.²

Upon receipt of the MRI report, Dr. Stein recommended an orthopedic referral and further noted in pertinent part:

I am not able to make a definitive statement as to whether the hip deterioration is work-related or not. Avascular necrosis, absent a hip fracture, is frequently associated with cigarette smoking and this patient is a one pack a day smoker. However, even if the necrosis was present prior to the work incident, it was apparently not symptomatic, and may have been aggravated by the accident. I will defer to the orthopedic surgeon in regard to causation.³

After a preliminary hearing on April 9, 2010, Special ALJ Thomas Richardson entered an Order For Independent Medical Examination which authorized Dr. Stein to make a referral to an orthopedic surgeon to further evaluate the claimant. Claimant was then referred to Dr. Paul Pappademos for an independent medical examination.

Dr. Pappademos examined claimant on June 9, 2010, and diagnosed claimant with bilateral hip osteoarthritis. Dr. Pappademos opined that claimant would benefit from total hip arthroplasties in the future and that the work-related injury may have exacerbated claimant's preexisting condition. The doctor's report noted in part:

The real reason I was asked to see him [claimant] was to determine causation. He states he had no pain in his hips prior to his injury. I would say that the injury may have exacerbated a pre-existing condition. Unfortunately, there were lumbar spine films obtained around the injury and I was unable to see the femoral head on that view of [t]he AP of the lumbar spine. However, I would not expect the injury to have caused such rapid destruction that he would develop severe osteoarthritis with large cysts, collapse of the femoral heads, and peripheral osteophyte in less than one years time. Because of that I would consider the condition in his hips to be pre-existing but I would state that the injury may have exacerbated this pre-existing condition.⁴

² Ibid., Ex. 5.

³ Ibid., Ex. 1.

⁴ P.H. Trans. (Oct. 15, 2010), Cl. Ex. 1.

In an October 8, 2010 letter, Dr. Pappademos responded to a letter inquiry from respondent's counsel. The doctor stated that regardless of the work place aggravation the claimant would have required total hip arthroplasties in the future. But the doctor again noted that claimant had no hip pain before his injury. The doctor's letter further stated:

In answer to your first question, "Are you able to state within a reasonable degree of medical probability the claimant sustained an injury as defined by the Workers Compensation Act?" I would tell you that based on the history taken in the office, the injury he sustained at work could have aggravated the suspected pre-existing condition in the hips. This could certainly be due to change in the physical structure of the body so that it gives way under stress of a workers usual labor.⁵

Upon receipt of Dr. Pappademos' report, Dr. Stein issued a follow-up report noting that Dr. Pappademos diagnosis was that claimant has severe degenerative arthritis in the hips even though the MRI indicated compatibility with avascular necrosis. Nonetheless, Dr. Stein further noted that although the two were different pathologic entities, the end resulting hip pain and ultimately hip replacement is the same. Dr. Stein further opined:

As noted in my report of 1/15/10, I am deferring to the orthopedic surgeon in regard to causation. However, I agree with Dr. Pappademos that this process in the left hip preexisted the work injury. Nonetheless, assuming the accuracy of the history that there was no prior symptomatology, the work incident presented an aggravation of the condition.⁶

The claimant's uncontradicted testimony was that he did not have any pain or problems with his hips before the work-related accidental injury. The claimant's testimony alone is sufficient evidence of his physical condition.⁷

It is well settled in this state that an accidental injury is compensable even where the accident only serves to aggravate or accelerate an existing disease or intensifies the affliction.⁸ The test is not whether the job-related activity or injury caused the condition but whether the job-related activity or injury aggravated or accelerated the condition.⁹

⁵ P.H. Trans. (Oct. 15, 2010) Cl. Ex. 1.

⁶ Id.

⁷ *Hanson v. Logan U.S.D.* 326, 28 Kan. App. 2d 92, 11 P.3d 1184, rev. denied 270 Kan. 898 (2001).

⁸ *Harris v. Cessna Aircraft Co.*, 9 Kan. App. 2d 334, 678 P.2d 178 (1984); *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978); *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976).

⁹ *Hanson v. Logan U.S.D.* 326, 28 Kan. App. 2d 92, 11 P.3d 1184, rev. denied 270 Kan. 898 (2001); *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

Respondent argues claimant has not met his burden of proof because the medical evidence was not based upon a reasonable degree of medical certainty. Respondent notes that Dr. Pappademos couched his opinion in equivocal terms that the accident “could have” or “may have” aggravated claimant’s preexisting bilateral hip condition. However, Dr. Stein in his follow-up report states that the work injury aggravated claimant’s condition. Consequently, there is medical evidence sufficient to establish that claimant’s work-related accident aggravated the claimant’s preexisting bilateral hip condition.

Based upon the claimant’s testimony that he never experienced hip problems until after his accidental injury and Dr. Stein’s opinion that the work incident aggravated his preexisting condition, this Board Member finds claimant has met his burden of proof to establish accidental injury arising out of and in the course of his employment.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.¹⁰ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2009 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.¹¹

WHEREFORE, it is the finding of this Board Member that the Order For Compensation of Administrative Law Judge Pamela J. Fuller dated October 18, 2010, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of January 2011.

HONORABLE DAVID A. SHUFELT
BOARD MEMBER

c: Steven L. Brooks, Attorney for Claimant
William L. Townsley III, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge

¹⁰ K.S.A. 44-534a.

¹¹ K.S.A. 2009 Supp. 44-555c(k).